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IN THE SUPREME COURT
OF THE UNITED STATES

No. 81-2280, October Term, 1982

DENNIS CALLAWAY,

Petitioner,

v.

STATE OF WISCONSIN,

Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Petitioner, Dennis Callaway, files this reply pursuant to Rule 22, Rules of the Supreme Court of the United States, to correct certain factual inaccuracies in Respondent's Brief in Opposition.

On page 17 of its Brief, Respondent asserts that Petitioner did not raise, in the Wisconsin Court of Appeals, the issue of whether consent from an owner or permissive driver is a necessary prerequisite to a valid inventory search. However, Petitioner

did argue that while the consent issue need not be reached because the seizure was clearly illegal, the New Jersey Supreme Court had also held that consent was a necessary prerequisite to an inventory search. Brief in Wisconsin Court of Appeals, p. 25, n. 6. Moreover, Petitioner broadly argued in that court that the police should have explored reasonable alternatives to seizure and inventory, including consent to forego the inventory. Id., pp. 22-26.

Accordingly, Petitioner submits that the issue was fairly raised in the state court of appeals. In any event, the issue was undisputably raised in the state supreme court and Respondent concedes that that court rejected Petitioner's argument.

Respondent further contends that there is evidence in the record that Petitioner was not the car's owner. Brief in Opposition, pp. 17-18. However, the evidence more precisely is that Petitioner was not the

titled owner. He was in all respects treated as the actual owner, to the extent that the police listed Petitioner as the owner on the inventory report following search of the car. Petitioner had been stopped, while driving this car, by the same officer who arrested him, only two weeks before the arrest. The officer himself thus deduced from this prior encounter that Petitioner indeed owned the car (P.H.: 12).

No contention has ever been made that Petitioner did not have at least permission to drive the car. To the contrary, Petitioner asserted in the Wisconsin Supreme Court that he was purchasing the car at the time of arrest, and had exclusive dominion and control over it. Brief in Wisconsin Supreme Court, pp. 33, n. 10. If there is a deficiency in the record, moreover, it was occasioned by Respondent's claim, in the trial court, that ownership was irrelevant to the issue. 103 Wis.2d at 396-398, 308 N.W.2d at 901-902.

On a final unrelated point, Respondent contends the decision below did not attempt to justify the seizure of the car on a consent theory. Brief in Opposition, pp. 9-10. The decision speaks for itself, and needs no further explication. It bears mention, however, that counsel for Respondent, at oral argument below, specifically and unequivocally invited the court to justify the seizure on the basis of consent—the very issue Respondent now claims was not "(t)he issue before the Wisconsin Supreme Court."

CONCLUSION

Petitioner respectfully requests the relief specified in his Petition for Writ of Certiorari.

Respectfully submitted,

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